IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 20 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-
and
HON'BLE MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

COMMISSIONER OF INCOME-TAX

Versus

TRANSPEK INDUSTRY LTD

Appearance:

1. INCOME TAX REFERENCE No. 20 of 1992

MR MANISH R BHATT for Petitioner No. 1

..... for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 04/09/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. This is the reference at the instance of the revenue under section 256 (1) of the Income-tax Act, 1961 ('the Act'). The following question of law has been referred to us by the Income Tax Appellate Tribunal, Ahmedabad Bench 'C' for Assessment Year 1983-84:-

"Whether, the Appellate Tribunal is right in law and on facts in directing the inspecting Assistant Commissioner to allow depreciation at the rate of 15% on diesel generating set ?"

2. The assessee, a limited company, claimed depreciation at the rate of 15% on diesel generating set stating that the same was a part and parcel of the same machinery which was owned and used by the assessee. It was further stated by the assessee that the plant and machinery came in contact with corrosive chemicals and all other plant and machinery were allowed depreciation at the rate of 15% and hence the diesel generating set, which was a part of the same machinery, was also entitled to depreciation at the rate of 15%. The assessing officer granted the claim of the assessee.

3. However, the C.I.T., taking revisional action under section 263 of the Act, restricted the deduction of depreciation to the rate of 10% holding that every assessment was distinct and independent. The assessee carried the matter in appeal before the Tribunal and the Tribunal referred to the decisions of the Ahmedabad Bench and Jaipur Bench of the Tribunal and found that such machineries, namely, generating sets, were entitled to depreciation at the rate of 30%, the assessee had restricted its claim to deduction at the rate of 15% and hence the same was allowable.

4. We have heard Mr.M.R.Bhatt, learned senior standing counsel appearing on behalf of the applicant-revenue. Though served, none appears on behalf of the respondent.

5. It is pertinent to note that over and above reliance on the different Benches of the Tribunal, in the present case, the Tribunal has also taken note of the fact that depreciation had been allowed on the same machinery at the rate of 15% to the assessee for all the preceding assessment years and also subsequent years. In our opinion, in light of this peculiar factual position, it is not necessary to interfere with the finding

recorded by the Tribunal and we hold that the Tribunal was justified in law in directing the assessing officer to allow depreciation at the rate of 15% on the diesel generating set.

6. The question referred to us is, therefore, answered in the affirmative, i.e. in favour of the assessee and against the revenue. Reference stands disposed of accordingly with no order as to costs.

Sd/-

(D.H.Waghela,J.)

Sd/-

(D.A. Mehta, J.)

(KMG Thilake)